

Message Text

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42

ORIGIN OPIC-06

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FM SECSTATE WASHDC

TO AMEMBASSY BANGKOK PRIORITY

UNCLAS STATE 169643

FOR RLA E. CLAPP

E.O. 11652: N/A

TAGS: EFIN

SUBJECT: CALABRIAN LITIGATION

REF: (A) STATE 114193, MAY 31, 1974; (B) BANGKOK 13167;
(C) BANGKOK 13698

1. OPIC CONCURS IN APPEAL AND IN WIPHAT'S DESIRE FOR ORAL
ARGUMENT. OPIC HAS OBLIGATED ONE HUNDRED DOLLARS TO COVER
FEES, ETC. ACCOUNT IS 71 X 4030, OBLIGATION NUMBER
7206009, JULY 17, 1975.

2. IN ORDER TO PERMIT OPIC TO COMMENT ON THE APPEAL BRIEF,
OPIC REQUESTS RLA CABLE TEXT OF THE APPEAL COURTS, OPINION
AND RELEVANT PORTIONS OF OPIC'S APPEAL BRIEF TO THE SUPREME
COURT. OPIC IS PARTICULARLY CONCERNED WITH THE RATIONALE
OF THE COURT IN HOLDING THAT CALTHAI ARTICLES OF ASSOCIA-
TION REQUIRED CALTHAI BOARD APPROVAL OF THE TRANSFER.

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3. BASED ON OPIC'S REVIEW OF REF B, OPIC'S TRIAL BRIEF AND PLAINTIFF'S APPEAL BRIEF, OPIC ASSUMES APPEAL COURT CONCLUDED THAT THE TRANSFER FROM CALNY TO CHEMBANK TO AID WAS VALID BUT THAT CONSENT OF CALTHAI BOARD TO REGISTRATION OF THE SHARES IN AID'S NAME WAS REQUIRED UNDER SECTION 1129

OF THE THAI CIVIL AND COMMERCIAL CODE AND CALTHAI'S ARTICLES OF ASSOCIATION. OPIC BELIEVES SUCH AN OPINION MISCONSTRUES THE INTENT OF CALTHAI'S ARTICLES OF ASSOCIATION. SEE PARA 7, REF A. NEVERTHELESS, OPIC QUERIES WHETHER IT MAY BE FRUITFUL TO ARGUE THAT EVEN IF SUCH CONSENT WOULD NORMALLY BE REQUIRED UNDER SECTION 1129, IT WOULD NOT BE REQUIRED WHEN TRANSFER WAS MADE UNDER SECTION 1132 REGARDLESS OF ANY CONTRARY PROVISION IN CALTHAI'S ARTICLES OF ASSOCIATION. THUS WE MIGHT ARGUE THAT THIS TRANSFER RESULTED FROM A QUOTE EVENT SUCH AS DEATH OR BANKRUPTCY OF ANY SHAREHOLDER UNQUOTE BECAUSE CHEMBANK AND AID WERE ENTITLED TO TRANSFER THE SHARES PURSUANT TO A LAWFUL PLEDGE AND THEREFORE THAT REGISTRATION OF THE TRANSFER WAS REQUIRED UNDER SECTION 1132.

4. OPIC ALSO REQUESTS THAT RLA ASK WIPHAT WHAT EFFECT THE APPEAL COURT'S OPINION (IF AFFIRMED) WILL HAVE ON ACTS TAKEN BY CALTHAI SUBSEQUENT TO AID'S DESIGNATION OF NEW DIRECTORS AND WHAT REMEDIES WOULD BE AVAILABLE TO COGLIANDRO.

5. OPIC WISHES TO DISCUSS THE APPEAL COURT'S OPINION AND OPIC'S APPEAL TO THE SUPREME COURT WITH RLA AND WIPHAT BY TELEPHONE AFTER TEXT OF OPINION AND APPEAL BRIEF CABLED, POSSIBLY ON JULY 24 OR 25. PLEASE CHECK AVAILABILITY OF WIPHAT AND ADVISE OF A SUITABLE TIME AND WHETHER RLA PREFERS TO TELEPHONE OPIC OR VISA VERSA.

6. FYL. US COUNSEL FOR BANGKOK BANK, ROBERT OWEN OF PATTERSON, BELKNAP AND WEBB, NYC, ARE TRAVELING TO BANGKOK JULY 19 TO DISCUSS LITIGATION STRATEGY WITH THE BANK BOTH AS TO THE BANGKOK SUIT AND THE SUIT FILED AGAINST THE BANK IN NEW YORK. COUNSEL MAY SEEK TO CONTACT RLA.

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END FYI. CORRECTION: PARA 6; ADD ROBERT SACK AS CO-COUNSEL. KISSINGER

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